

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA**

<b>ELIZABETH SINES et al.</b>	:	<b>Case No. 3:17-cv-00072</b>
Plaintiffs	:	<b>Judge MOON</b>
	:	<b>Mag. Judge HOPPE</b>
	:	
-v-	:	
<b>JASON KESSLER et al.</b>	:	
	:	
Defendants	:	

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**BRIEF IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL**

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**A. Robert Ray**

Defendant Robert Ray has not been available by phone or email for most of this case. Rather, Counsel had to request contact through an alternative means (an online Alt-Right comment area) and Mr. Ray would then call. For more than 6 weeks, Mr. Ray has been absent from said comment area. Mr. Woodard and Mr. Kolenich (“Attorney’s”) have not heard from Mr. Ray in at least that amount of time.

Accordingly, and pursuant to the law of the case<sup>1</sup>, Mr. Ray's failure to communicate with Attorney's is sufficient cause to permit Attorney's to withdraw from representing Mr. Ray.

### **B. Christopher Cantwell**

Mr. Cantwell was an inmate at Albemarle County jail when Attorney's first met him. He was charged with violent offenses at that time. Through the superior efforts of Attorney Woodard, Mr. Cantwell eventually was convicted of only minor offenses.<sup>2</sup> In the immediate aftermath of the Unite the Right Rally in August 2017, Mr. Cantwell invited a reporter and camera crew into his hotel room and displayed a bed full of firearms.<sup>3</sup> Mr. Cantwell's above mentioned criminal cases stemmed from his actions during Unite the Right in 2017.

More recently, Mr. Cantwell has sent allegedly threatening internet communications directed at Ms. Kaplan, lead attorney for the Plaintiff's.<sup>4</sup> As a result, Mr. Cantwell has rendered Attorney's continued representation of him unreasonably difficult,<sup>5</sup> has created a conflict of interest between himself and Attorney's other clients,<sup>6</sup> and has engaged in conduct Attorney's consider "repugnant or imprudent".<sup>7</sup> Finally, all these stated reasons should be found to add up to "other good cause" to withdraw within the meaning Virginia Professional Guidelines.<sup>8</sup>

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<sup>1</sup> See Docket Entry 347 allowing Attorney's to withdraw from representing defendant Elliott Kline.

<sup>2</sup> Mr. Cantwell has not bothered to pay his attorney fee due for said services.

<sup>3</sup> Interview occurred August 13, 2017 and aired August 14, 2017.

<sup>4</sup> The nature of the communication is detailed in docket entry's 511 and 523 filed by Plaintiff's.

<sup>5</sup> Ms. Kaplan and her team have extended a considerable amount of professional courtesy to Attorney's during this litigation. It is hard to see how they could continue to do so if we are forced to defend this latest outburst by Mr. Cantwell. Moreover, Attorney's are at a loss as to how we would be able to argue Ms. Kaplan's concerns and requests for relief as expressed to the Court are unreasonable. See also Virginia Professional Guideline 1.16(b)(5).

<sup>6</sup> Same reason as in Footnote 5. Further and in order to preserve confidentiality, Attorney's can only state that Mr. Cantwell's recent behavior is extremely difficult to square with overall defense strategy and best practices as to this case.

<sup>7</sup> Virginia Professional Guideline 1.16(b)(3) in that he has arguably caused a fellow Attorney to have concerns for her safety.

<sup>8</sup> The Court should not expect Attorney's to continue to represent a party who is both degrading our other clients chances in this litigation and arguably threatening another Attorney involved in the case.

In addition to all of the above, Mr. Cantwell has made no effort to pay his outstanding fee invoices after having been repeatedly warned Attorney's would seek to withdraw if he did not do so.

Attorney's are aware of the Court's strong preference for completion of electronic discovery review prior to permitting any further Attorney withdrawals. Attorney's will, therefore, complete work on and authorize production of Mr. Ray's and Mr. Cantwell's ESI collections no later than the date responsive pleadings are due in regard to this motion.<sup>9</sup>

Attorney's respectfully move that Mr. Ray and Mr. Cantwell each be given fourteen (14) days from the date the Court grants this motion to retain new counsel and that Mr. Cantwell be given that same 14 days (not 14 extra days unless he retains new Counsel) to respond to the Plaintiff's motion to enjoin him. Attorney's further request the Court make interim orders protecting Ms. Kaplan during that time period.

The granting of this motion will not inconvenience the Court or other parties given that the case remains mired in the ESI discovery process and we do not even have an operative scheduling order at this point.<sup>10</sup>

In addition, Attorney's reasonably believe this will be the last time they will need to move to withdraw from a client during this litigation.

Respectfully Submitted,

s/ Elmer Woodard  
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<sup>9</sup> If either Ray or Cantwell forbids us to do so, Attorneys will so advise the Court and assert that additional ground in support of withdrawal.

<sup>10</sup> See docket entry 524, filed by Plaintiff's, discussing current case status in more detail.

Attorney for Robert Ray and Christopher Cantwell

s/ James E. Kolenich PHV

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Attorney for Robert Ray and Christopher Cantwell

CERTIFICATE OF SERVICE

I certify the above was served on July 25, 2019 by the Court's CM/ECF system and upon non ECF participants as follows:

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s/ James E. Kolenich PHV  
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